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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,506	01/21/2004	Dudley Langston	LANG3006/JEK	1468
23364 7590 04/11/2007 BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			EXAMINER PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3782	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/11/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/760,506	<b>Applicant(s)</b> LANGSTON, DUDLEY	
	<b>Examiner</b> Jes F. Pascua	<b>Art Unit</b> 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-12 and 14-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claims 1-4, 6-12 and 14-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, lacks antecedent basis for the "vent configuration", "at least one opening" or "a plurality of openings" closing in response to changes in air thrust, especially the embodiment of Fig. 8, which depicts the vent openings as circles. This is a new matter rejection.

2. Claims 1-4, 6-12 and 14-20 re rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the functional recitation "wherein each vent configuration opens and closes in response to changes in air thrust" is indefinite because it is not supported by recitation in the claim of sufficient structure to accomplish the function.

In claim 10, the functional recitation "wherein the at least one opening is configured to open and close in response to changes in air thrust" is indefinite because it is not supported by recitation in the claim of sufficient structure to accomplish the function.

In claim 15, the functional recitation "wherein the plurality of openings is configured to open and close in response to changes in air thrust" is indefinite because it is not supported by recitation in the claim of sufficient structure to accomplish the function.

3. Claims that have not been specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, first and second paragraphs.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 6, 7, 15, 16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 4,491,959 to Loeffberg.

As a note, Fig. 1 of Loeffberg shows the gusset sides of the bag having longitudinal folds 3, 3a and a transverse fold that extends along bottom seal 6b when the bag is in its filled condition. Fig. 2 shows the transverse fold and the vent openings 14 spaced therefrom.

Furthermore, Loeffberg discloses that triangular parts 22-25 and 29-32 cover and protect the vent openings 14 upon filling of the bag (column 3, lines 45-60), which renders the Loeffberg bag capable of performing the functional recitation "each vent

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configuration opens and closes in response to changes in air thrust and are further closed off when the package is in a filled state."

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loeffberg and W. Stanley Anthony, "Effect of Bagging on Moisture Change in Cotton Bales", 2003 ASAE Annual International Meeting, Paper Number 031168 (hereafter referred to as the Anthony Paper).

Loeffberg discloses the claimed invention except for the bag being a spiral sewn tube. The Anthony Paper discloses that it is known in the art to provide spiral sewn material to form vented, pleated bags. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the spiral sewn material of the Anthony Paper for the vented, pleated bag of Loeffberg, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

8. Claims 3, 4 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loeffberg and Great Britain Patent Specification No. 1,162,013 to Union Carbide Corporation.

Loefberg discloses the claimed invention except that vent configurations are round instead of slits. Union Carbide Corporation shows that oval or elliptical vent configurations are equivalent structures known in the art. Therefore, because these two vent configurations were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the round vent configurations of Loefberg for the oval or elliptical vent configurations of Union Carbide Corporation.

9. Claims 8-11, 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loefberg and the Anthony Paper.

Loefberg discloses the claimed invention except for the bag being constructed of woven polyolefin fabric with a polymeric coating. The Anthony Paper teaches that it is known in the art to form vented, pleated bags from woven polyolefin fabric with a polymeric coating. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the woven polyolefin fabric with a polymeric coating of the Anthony Paper for the vented, pleated bag of Loefberg, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

### ***Response to Arguments***

10. Applicant's arguments filed 01/29/2007 have been fully considered but they are not persuasive.

As discussed above, Loeffberg discloses openings located in the gusseted fold spaced from the transverse fold of the gusset, wherein the openings are configured to open and close, via the triangular portions 22-25 and 29-32.

Applicant's arguments with respect to claim 2 have been considered but are moot in view of the new ground of rejection.

Regarding applicant's argument that neither Loeffberg nor the Union Carbide patents do disclose slits, the Examiner asserts that the oval and elliptical shaped openings of the Union Carbide reference meet the structure of applicant's claimed slits. Furthermore, the openings of the Union Carbide patent are considered to be oriented obliquely relative to the longitudinal edges of the first and second faces panels to the same degree applicant has positively defined the orientation of the first and second face panels.

Regarding applicant's argument that there is no suggestion to combine Loeffberg and the Union Carbide patents, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Union Carbide patent teaches that circular, oval or elliptically shaped openings are equivalent structures in the art of vented, pleated bags that are readily employed to permit venting of the bag.

In response to applicant's argument that there is no reasonable expectation of success by the combining of Loeffberg and the Union Carbide patent, the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art.

In response to applicant's argument that a skilled artisan would provide a woven polyolefin fabric with a polymeric coating to form the bag of Loeffberg, the newly applied Anthony Paper has been added only as directly corresponding evidence to support the Examiner's prior common knowledge finding, and does not result in a new issue or constitute a new ground of rejection.

### ***Conclusion***


11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jes F. Pascua  
Primary Examiner  
Art Unit 3782

JFP